

The Honorable Christopher M. Alston
Chapter 7
Hearing Date: August 24, 2018
Hearing Time: 9:30 a.m.
Hearing Location: 700 Stewart St, Seattle,
WA
7th Floor, Courtroom 7206
Response Date: August 17, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

TOC HOLDINGS CO., fka TIME OIL
CO.,

Debtor.

Case No. 17-11872-CMA

JOINT MOTION FOR ORDER
APPROVING FIRST AMENDMENT TO
ASSET PURCHASE AGREEMENT AND
AMENDING EFFECTIVE DATE

I. INTRODUCTION

Cantera Development Group, LLC (“Cantera”) and Edmund J. Wood, chapter 7 trustee (“Trustee”) for TOC Holdings Co. (“Debtor”), jointly request the court enter an order approving an amendment to that certain Asset Purchase Agreement entered into and made effective as of March 16, 2018, and approved by entry of a final order on June 14, 2018 (the “APA”), so that the effective date of the APA is June 14, 2018 (the “Joint Motion”), as follows.

II. JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief sought in this Motion is based upon sections 105(a), 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

1 III. BACKGROUND

2 This case was commenced by the Debtor's filing of a voluntary chapter 7
3 bankruptcy petition on April 24, 2017. Edmund J. Wood was appointed as the chapter 7 trustee
4 ("Trustee") on the same date and has acted in that capacity at all times since. The Joint Motion
5 is supported by the declaration of Doug Ciserella being filed concurrently (the "Ciserella Decl.")
6 and the files and records of this case, including but not limited to the Trustee's bid procedures
7 motion [Dkt. # 348] and the declarations in support of the bid procedures motion [Dkt. ## 350-
8 351, 355], the order approving Cantera as a stalking-horse bidder [Dkt. # 371], the supplemental
9 filing of the unsigned APA [Dkt. # 378], the Trustee's motion for order approving the sale to
10 Cantera [Dkt. # 418] and the declaration of Edmund J. Wood in support [Dkt. # 419], and the
11 Findings of Fact for Order Approving Sale of Seattle Property Free and Clear of Liens and
12 Claims and Assignment of Unexpired Lease [Dkt. # 457] (the "Findings") and the Order
13 Approving Sale of Seattle Property Free and Clear of Liens and Claims and Assignment and
14 Assumption of Unexpired Lease [Dkt. # 458] (the "Final Order").

15 After extensive discussion and due diligence, Cantera and the Trustee negotiated
16 an Asset Purchase Agreement for the Property, more particularly described in Final Order. The
17 APA was originally signed and made effective as of March 16, 2018 (the "Original Effective
18 Date"). Final Order, Exh. B. However, it was the parties' intent that Cantera, as buyer, would
19 have not less than 180 days and not more than 360 days to conduct its due diligence after a final
20 order approving the sale to Cantera was entered (the "Due Diligence Period"). Ciserella Decl.,
21 ¶¶ 2-3. At the time the APA was signed and made effective, Cantera and the Trustee anticipated
22 that a final order would be entered shortly thereafter. However, the Final Order was not entered
23 until June 14, 2018, 90 days after the Original Effective Date, which had the unintended effect of
24 reducing Cantera's intended Due Diligence Period.

1 Cantera and the Trustee have agreed to amend the effective date of the APA, from
2 the Original Effective Date of March 16, 2018, to June 14, 2018, the date the Final Order was
3 entered. Attached as Exhibit A is a proposed First Amendment to Asset Purchase Agreement.

4 IV. ISSUE

5 Should the court enter a stipulated order amending the APA so that the Effective
6 Date is June 14, 2018, the date the Findings of Fact and the Final Order were entered?

7 V. DISCUSSION

8 The APA allows not less than 180 days and not more than 360 days of due
9 diligence for Cantera to “investigate and approve, in its sole and absolute discretion, all matters
10 pertaining to the physical, structural, electrical, mechanical, soil, drainage, environmental,
11 zoning, land use and other governmental compliance and conditions and all other matters with
12 respect to the Property[.]” Final Order, Exh. B at Section 2.11. It was the parties’ intent that the
13 Due Diligence Period not start to run until the sale was actually approved by entry of a final
14 order, which did not occur until June 14, 2018, exactly 90 days after the Original Effective Date.
15 The First Amendment to Asset Purchase Agreement simply causes the APA to reflect the parties’
16 original intent.

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1 VI. RELIEF REQUESTED

2 Cantera and the Trustee respectfully request that the court enter an order, in
3 substantially the form attached as Exhibit B, approving the First Amendment to Asset Purchase
4 Agreement and amending the Original Effective Date so that the Effective Date is June 14, 2018,
5 the date the Final Order was entered.

6 DATED this 31st day of July, 2018.

7 FOSTER PEPPER PLLC

GROSHONG LAW PLLC

8
9 /s/ Bryan T. Glover (per e-mail dated 7.31.18)
10 Deborah A. Crabbe, WSBA No. 22263
11 Dillon E. Jackson, WSBA No. 1539
12 Bryan T. Glover, WSBA No. 51045

/s/ Geoffrey Groshong
Geoffrey Groshong
WSB No. 6124

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Attorneys for Chapter 7 Trustee
Edmund J. Wood

Attorneys for Buyer
Cantera Development Group, LLC

In re TOC Holdings Co.
Case No. 17-11872-CMA

Exhibit A

**FIRST AMENDMENT TO
ASSET PURCHASE AGREEMENT**

This FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT is made effective as of July ____, 2018, as to that certain Asset Purchase Agreement (the “**Agreement**”) originally entered into and made effective as of March 16, 2018 by and between CANTERA DEVELOPMENT GROUP, LLC, an Illinois limited liability company or assigns (the “**Purchaser**”), and EDMUND J. WOOD as Chapter 7 Trustee of the Bankruptcy Estate of TOC HOLDINGS CO., a Washington corporation, formerly known as Time Oil Co. (“**Seller**”).

The first paragraph of the Agreement provides that

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is entered into and made effective as of the 16th day of March, 2018 (the “**Effective Date**”) by and between CANTERA DEVELOPMENT GROUP, LLC, an Illinois limited liability company or assigns (“**Purchaser**”), and EDMUND J. WOOD as Chapter 7 Trustee of the Bankruptcy Estate of TOC HOLDINGS CO., a Washington corporation, formerly known as Time Oil Co. (“**Seller**”).

The parties hereby amend the first paragraph of the Agreement to provide that

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is entered into as of the 16th day of March, 2018 by and between CANTERA DEVELOPMENT GROUP, LLC, an Illinois limited liability company or assigns (“**Purchaser**”), and EDMUND J. WOOD as Chapter 7 Trustee of the Bankruptcy Estate of TOC HOLDINGS CO., a Washington corporation, formerly known as Time Oil Co. (“**Seller**”), and made effective as of June 14, 2018 (the “**Effective Date**”).

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Asset Purchase Agreement to be executed by their respective duly authorized representatives on the date written below.

DATED: July ____, 2018

SELLER:

EDMUND J. WOOD as Chapter 7 Trustee of the
Bankruptcy Estate of TOC Holdings Co. formerly known
as Time Oil Co.

DATED: July ____, 2018

PURCHASER:

CANTERA DEVELOPMENT GROUP, LLC,
a Colorado limited liability company

By Douglas Ciserella, Its Managing Member

In re TOC Holdings Co.
Case No. 17-11872-CMA

Exhibit B

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9 UNITED STATES BANKRUPTCY COURT
10 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

11 In re

12 TOC HOLDINGS CO., fka TIME OIL
13 CO.,

14 Debtor.
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Case No. 17-11872-CMA

[PROPOSED] ORDER APPROVING
FIRST AMENDMENT TO ASSET
PURCHASE AGREEMENT AND
AMENDING EFFECTIVE DATE

16 This matter came before the Court on the joint motion of Cantera Development
17 Group, LLC, (“Cantera”) and Edmund J. Wood, chapter 7 trustee for TOC Holdings Co.
18 (“Trustee”), for an order approving an amendment to that certain Asset Purchase Agreement
19 between Cantera and the Trustee entered into and made effective as of March 16, 2018, as
20 previously approved by the court on June 14, 2018 (the “APA”), so that the effective date of the
21 APA is June 14, 2018, the date the Final Order¹ was approved by the Court [Dkt. # ____] (the
22 “Joint Motion”). The Court having read the Joint Motion, the previously entered Final Order, the
23 notice of hearing on the Joint Motion [Dkt. # ____], the declaration of Doug Ciserella in support
24 of the Joint Motion [Dkt. # ____], the proof of service filed by Cantera [Dkt. # ____], any
25 responses to the Joint Motion, any replies in support of the Joint Motion, and the files and
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¹ Terms not otherwise defined shall have the meanings assigned in the Joint Motion.

1 records herein; it appearing to the Court that notice of Joint Motion is adequate and proper in the
2 circumstances of this case; and that good cause exists to grant the Joint Motion; now, therefor,

3 IT IS HEREBY ORDERED, as follows:

4 1. The Joint Motion is granted.

5 2. The First Amendment to Asset Purchase Agreement, a true copy of which
6 is attached as Exhibit 1, is approved.

7 3. The Effective Date of the APA is hereby amended to June 14, 2018.

8 /// End of Order ///

9 Presented by:

10 GROSHONG LAW PLLC

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13 _____
Geoffrey Groshong
WSB No. 6124

14 Attorneys for Buyer
15 Cantera Development Group, LLC

16 FOSTER PEPPER PLLC

17
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19 Deborah A. Crabbe, WSBA No. 22263
Dillon E. Jackson, WSBA No. 1539
20 Bryan T. Glover, WSBA No. 51045

21 Attorneys for Chapter 7 Trustee
Edmund J. Wood